

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

ADJUSTACAM LLC,

Plaintiff,

vs.

AMAZON.COM, INC., ET AL.

Defendants.

Case No. 6:10-CV-329-LED

JURY TRIAL DEMANDED

**DEFENDANTS NEWEGG INC. AND NEWEGG.COM INC.'S ANSWER,  
AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS TO  
PLAINTIFF'S THIRD AMENDED COMPLAINT**

Defendants Newegg Inc. and Newegg.com Inc. (collectively, "Newegg"), by and through their undersigned counsel of record, hereby respond to the Third Amended Complaint ("Complaint") of AdjustaCam LLC ("Plaintiff"), filed on August 9, 2011, as follows:

**PARTIES**

1. Answering Paragraph 1, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 and, therefore, denies the same.
2. Answering Paragraph 2, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 and, therefore, denies the same.
3. Answering Paragraph 3, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 and, therefore, denies the same.
4. Answering Paragraph 4, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 and, therefore, denies the same.
5. Answering Paragraph 5, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 and, therefore, denies the same.

6. Answering Paragraph 6, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 and, therefore, denies the same.

7. Answering Paragraph 7, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 and, therefore, denies the same.

8. Answering Paragraph 8, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 and, therefore, denies the same.

9. Answering Paragraph 9, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 and, therefore, denies the same.

10. Answering Paragraph 10, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 and, therefore, denies the same.

11. Answering Paragraph 11, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 and, therefore, denies the same.

12. Answering Paragraph 12, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 and, therefore, denies the same.

13. Answering Paragraph 13, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 and, therefore, denies the same.

14. Answering Paragraph 14, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 and, therefore, denies the same.

15. Answering Paragraph 15, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 and, therefore, denies the same.

16. Answering Paragraph 16, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 and, therefore, denies the same.

17. Answering Paragraph 17, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 and, therefore, denies the same.

18. Answering Paragraph 18, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 and, therefore, denies the same.

19. Answering Paragraph 19, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 and, therefore, denies the same.

20. Answering Paragraph 20, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20 and, therefore, denies the same.

21. Answering Paragraph 21, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 and, therefore, denies the same.

22. Answering Paragraph 22, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 and, therefore, denies the same.

23. Answering Paragraph 23, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23 and, therefore, denies the same.

24. Answering Paragraph 24, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 and, therefore, denies the same.

25. Answering Paragraph 25, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25 and, therefore, denies the same.

26. Answering Paragraph 26, Newegg admits that Newegg Inc. has a place of business in the City of Industry, California. Newegg denies any remaining allegations set forth in Paragraph 26.

27. Answering Paragraph 27, Newegg admits that Newegg.com Inc. had a place of business in the City of Industry, California. Newegg denies any remaining allegations set forth in Paragraph 27.

28. Answering Paragraph 28, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 and, therefore, denies the same.

29. Answering Paragraph 26, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 and, therefore, denies the same..

30. Answering Paragraph 30, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 30 and, therefore, denies the same.

31. Answering Paragraph 31, Newegg admits that Defendant Rosewill Inc. (“Rosewill”) has a place of business in City of Industry, California.

32. Answering Paragraph 32, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 32 and, therefore, denies the same.

33. Answering Paragraph 33, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 and, therefore, denies the same.

34. Answering Paragraph 34, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 and, therefore, denies the same.

35. Answering Paragraph 35, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 35 and, therefore, denies the same.

36. Answering Paragraph 36, Newegg admits that Rosewill has a place of business in the City of Industry, California. Newegg denies any remaining allegations set forth in Paragraph 36.

37. Answering Paragraph 37, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 37 and, therefore, denies the same.

38. Answering Paragraph 38, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 38 and, therefore, denies the same.

### **JURISDICTION AND VENUE**

39. Answering Paragraph 39, Newegg admits that Plaintiff purports to bring an action under the patent laws of the United States, Title 35 of the United States Code, and that this Court has subject matter jurisdiction over such actions – but not necessarily over this particular action – pursuant to 28 U.S.C. §§ 1331 and 1338(a). Newegg admits that it has shipped, offered for sale, and sold products from the state of California, and has shipped products from the states of Tennessee and New Jersey. Newegg admits that it has a website that is accessible by at least some users of the Internet. Newegg denies that it has committed any infringing acts in this district, in Texas, or anywhere else. Newegg denies that it has induced and/or contributed to infringement of the patent-in-suit by any users located in this district, in Texas, or anywhere else. Newegg answers Paragraph 39 only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith. Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 39 to the extent they relate to other Defendants and, therefore, denies the same. Newegg denies the remaining allegations set forth in Paragraph 39.

40. Answering Paragraph 40, Newegg admits that 28 U.S.C. §§ 1391 and 1400 govern the venue of patent claims. Newegg admits that it has shipped, offered for sale, and sold products from the state of California, and has shipped products from the states of Tennessee and New Jersey. Newegg admits that it has a website that is accessible by at least some users of the Internet. Newegg denies that it has committed any infringing acts in this district, in Texas, or anywhere else. Newegg denies that it has induced and/or contributed to infringement of the patent-in-suit by any users located in this district, in Texas, or anywhere else. Newegg answers Paragraph 40 only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith. Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations

set forth in Paragraph 40 to the extent they relate to other Defendants and, therefore, denies the same. Newegg denies the remaining allegations set forth in Paragraph 40.

**COUNT I**

**PURPORTED INFRINGEMENT OF U.S. PATENT NO. 5,855,343**

41. Answering Paragraph 41, Newegg admits that United States Patent No. 5,855,343 (“the ‘343 patent”) is entitled “Camera Clip,” lists a purported filing date of March 7, 1997, and lists a purported issue date of January 5, 1999. Newegg lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 41 and, therefore, denies the same.

42. Answering Paragraph 42, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 42 and, therefore, denies the same.

43. Answering Paragraph 43, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 43 and, therefore, denies the same.

44. Answering Paragraph 44, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 44 and, therefore, denies the same.

45. Answering Paragraph 45, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 45 and, therefore, denies the same.

46. Answering Paragraph 46, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 46 and, therefore, denies the same.

47. Answering Paragraph 47, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 47 and, therefore, denies the same.

48. Answering Paragraph 48, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 48 and, therefore, denies the same.

49. Answering Paragraph 49, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 49 and, therefore, denies the same.

50. Answering Paragraph 50, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 50 and, therefore, denies the same.

51. Answering Paragraph 51, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 51 and, therefore, denies the same.

52. Answering Paragraph 52, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 52 and, therefore, denies the same.

53. Answering Paragraph 53, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 53 and, therefore, denies the same.

54. Answering Paragraph 54, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 54 and, therefore, denies the same.

55. Answering Paragraph 55, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 55 and, therefore, denies the same.

56. Answering Paragraph 56, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 56 and, therefore, denies the same.

57. Answering Paragraph 57, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 57 and, therefore, denies the same.

58. Answering Paragraph 58, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 58 and, therefore, denies the same.

59. Answering Paragraph 59, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 59 and, therefore, denies the same.

60. Answering Paragraph 60, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 60 and, therefore, denies the same.

61. Answering Paragraph 61, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 61 and, therefore, denies the same.

62. Answering Paragraph 62, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 62 and, therefore, denies the same.

63. Answering Paragraph 63, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 63 and, therefore, denies the same.

64. Answering Paragraph 64, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 64 and, therefore, denies the same.

65. Answering Paragraph 65, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 and, therefore, denies the same.

66. Answering Paragraph 66, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 66 and, therefore, denies the same.

67. Answering Paragraph 67, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 67 and, therefore, denies the same.

68. Answering Paragraph 68, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 68 and, therefore, denies the same.

69. Answering Paragraph 69, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 69 and, therefore, denies the same.

70. Answering Paragraph 70, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 70 and, therefore, denies the same.



71. Answering Paragraph 71, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 71 and, therefore, denies the same.

72. Answering Paragraph 72, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 72 and, therefore, denies the same.

73. Answering Paragraph 73, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 73 and, therefore, denies the same.

74. Answering Paragraph 74, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 74 and, therefore, denies the same.

75. Answering Paragraph 75, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 75 and, therefore, denies the same.

76. Answering Paragraph 76, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 76 and, therefore, denies the same.

77. Answering Paragraph 77, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 77 and, therefore, denies the same.

78. Answering Paragraph 78, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 78 and, therefore, denies the same.

79. Answering Paragraph 79, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 79 and, therefore, denies the same.

80. Answering Paragraph 80, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 80 and, therefore, denies the same.

81. Answering Paragraph 81, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 81 and, therefore, denies the same.

82. Answering Paragraph 82, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 82 and, therefore, denies the same.

83. Answering Paragraph 83, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 83 and, therefore, denies the same.

84. Answering Paragraph 84, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 84 and, therefore, denies the same.

85. Answering Paragraph 85, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 85 and, therefore, denies the same.

86. Answering Paragraph 86, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 86 and, therefore, denies the same.

87. Answering Paragraph 87, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 87 and, therefore, denies the same.

88. Answering Paragraph 88, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 88 and, therefore, denies the same.

89. Answering Paragraph 89, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 89 and, therefore, denies the same.

90. Answering Paragraph 90, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 90 and, therefore, denies the same.

91. Answering Paragraph 91, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 91 and, therefore, denies the same.

92. Answering Paragraph 92, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 92 and, therefore, denies the same.

93. Answering Paragraph 93, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 93 and, therefore, denies the same.

94. Answering Paragraph 94, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 94 and, therefore, denies the same.

95. Answering Paragraph 95, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 95 and, therefore, denies the same.

96. Answering Paragraph 96, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 96 and, therefore, denies the same.

97. Answering Paragraph 97, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 97 and, therefore, denies the same.

98. Answering Paragraph 98, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 98 and, therefore, denies the same.

99. Answering Paragraph 99, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 99 and, therefore, denies the same.

100. Answering Paragraph 100, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 100 and, therefore, denies the same.

101. Answering Paragraph 101, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 101 and, therefore, denies the same.

102. Answering Paragraph 102, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 102 and, therefore, denies the same.

103. Answering Paragraph 103, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 103 and, therefore, denies the same.

104. Answering Paragraph 104, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 104 and, therefore, denies the same.

105. Answering Paragraph 105, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 105 and, therefore, denies the same.

106. Answering Paragraph 106, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 106 and, therefore, denies the same.

107. Answering Paragraph 107, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 107 and, therefore, denies the same.

108. Answering Paragraph 108, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 108 and, therefore, denies the same.

109. Answering Paragraph 109, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 109 and, therefore, denies the same.

110. Answering Paragraph 110, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 110 and, therefore, denies the same.

111. Answering Paragraph 111, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 111 and, therefore, denies the same.

112. Answering Paragraph 112, Newegg denies that it has been or now is directly infringing any valid and enforceable claim of the '343 patent in the present district, in Texas, or elsewhere in the United States. Newegg denies the remaining allegations set forth in Paragraph 112.

113. Answering Paragraph 113, Newegg denies that it has been or now is indirectly infringing by way of inducing infringement or by contributing to the infringement of the '343 patent in the present district, in Texas, or elsewhere in the United States. Newegg denies the remaining allegations set forth in Paragraph 113.

114. Answering Paragraph 114, Newegg denies that the Creative Live! Cam Video IM Pro Webcam, HP Premium Autofocus Webcam, iHome IH-W301DW MyLife Webcam, iHome IH-W305DB MyLife MyHome YourHome Webcams, iHome IH-W306DW MyLife MyHome YourHome Webcams, Micro Innovations Basic Webcam, Minoru 3D Webcam, Pixxo AW-I1130, Pixxo AW-M2130 Webcam, Pixxo AW-U1131 Webcam, Rosewill RCM-8163 Webcam, or any apparatus sold by Newegg infringes any valid and enforceable claim of the '343 patent. Newegg denies the remaining allegations set forth in Paragraph 114.

115. Answering Paragraph 115, Newegg denies that it is liable for infringement of the '343 patent pursuant to 35 U.S.C. § 271. Newegg denies any remaining allegations set forth in Paragraph 115.

116. Answering Paragraph 116, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 116 and, therefore, denies the same.

117. Answering Paragraph 117, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 117 and, therefore, denies the same.

118. Answering Paragraph 118, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 118 and, therefore, denies the same.

119. Answering Paragraph 119, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 119 and, therefore, denies the same.

120. Answering Paragraph 120, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 120 and, therefore, denies the same.

121. Answering Paragraph 121, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 121 and, therefore, denies the same.

122. Answering Paragraph 122, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 122 and, therefore, denies the same.

123. Answering Paragraph 123, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 123 and, therefore, denies the same.

124. Answering Paragraph 124, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 124 and, therefore, denies the same.

125. Answering Paragraph 125, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 125 and, therefore, denies the same.

126. Answering Paragraph 126, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 126 and, therefore, denies the same.

127. Answering Paragraph 127, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 127 and, therefore, denies the same.

128. Answering Paragraph 128, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 128 and, therefore, denies the same. Newegg answers Paragraph 128 only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith.

129. Answering Paragraph 129, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 129 and, therefore, denies the same. Newegg answers Paragraph 129 only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith.

130. Answering Paragraph 130, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 130 and, therefore, denies the same.

Newegg answers Paragraph 130 only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith.

131. Answering Paragraph 131, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 131 and, therefore, denies the same. Newegg answers Paragraph 131 only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith.

132. Answering Paragraph 132, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 132 and, therefore, denies the same.

133. Answering Paragraph 133, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 133 and, therefore, denies the same.

134. Answering Paragraph 134, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 134 and, therefore, denies the same.

135. Answering Paragraph 135, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 135 and, therefore, denies the same.

136. Answering Paragraph 136, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 136 and, therefore, denies the same.

137. Answering Paragraph 137, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 137 and, therefore, denies the same.

138. Answering Paragraph 138, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 138 and, therefore, denies the same.

139. Answering Paragraph 139, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 139 and, therefore, denies the same.

140. Answering Paragraph 140, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 140 and, therefore, denies the same.

141. Answering Paragraph 141, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 141 and, therefore, denies the same.

142. Answering Paragraph 142, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 142 and, therefore, denies the same.

143. Answering Paragraph 143, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 143 and, therefore, denies the same.

144. Answering Paragraph 144, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 144 and, therefore, denies the same.

145. Answering Paragraph 145, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 145 and, therefore, denies the same.

146. Answering Paragraph 146, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 146 and, therefore, denies the same.

147. Answering Paragraph 147, Newegg lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 147 and, therefore, denies the same.

148. Answering Paragraph 148, Newegg denies the allegations of Paragraph 148 as they pertain to Newegg. Newegg lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations to the extent they relate to other Defendants and, therefore, denies the same. Newegg answers Paragraph 148 only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith.

149. Answering Paragraph 149, Newegg denies the allegations of Paragraph 149 as they pertain to Newegg. Newegg lacks knowledge or information sufficient to form a belief as to the



truth of the remaining allegations to the extent they relate to other Defendants and, therefore, denies the same. Newegg answers Paragraph 149 only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith.

**PRAYER FOR RELIEF**

Answering Paragraphs (1) through (7) of the Prayer for Relief in Plaintiff's Third Amended Complaint, Newegg denies that Plaintiff is entitled to any of the relief requested therein with respect to Newegg. Newegg also denies that Plaintiff is entitled to any of the relief requested therein to the extent such relief is dependent upon the '343 patent being valid, enforceable, and capable of being infringed. Newegg lacks knowledge or information sufficient to form a belief regarding any remaining relief requested to the extent it relates to other Defendants and, therefore, denies that Plaintiff is entitled to such relief. Newegg answers Paragraphs (1) through (7) of the Prayer for Relief only for itself, and with respect to Rosewill, Newegg refers to the Answer of Rosewill, filed concurrently herewith.

**JURY DEMAND**

Newegg admits that Plaintiff has requested a trial by jury.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE  
(Failure to State a Claim)**

The Complaint, and each and every purported claim for relief therein, fails to allege facts sufficient to state a claim against Newegg.

**SECOND AFFIRMATIVE DEFENSE  
(Noninfringement)**

Newegg has not infringed and is not infringing the '343 patent under any theory, including direct infringement, infringement by inducement, or contributory infringement.

**THIRD AFFIRMATIVE DEFENSE**  
**(Invalidity)**

The '343 patent and all of the claims thereof are invalid for failure to comply with one or more of the requirements for patentability, including those set forth in the Patent Act, 35 U.S.C. §§ 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, 112, and/or 305.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Estoppel)**

Plaintiff is estopped from claiming that the '343 patent covers any method, system, apparatus, or product of Newegg by virtue of prior art and/or prosecution history.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Limitation on Damages)**

To the extent that Plaintiff seeks damages for any alleged infringement more than six years before the filing of this action, the claims are barred by the statutory limitation on damages pursuant to 35 U.S.C. § 286.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Waiver, Laches, and Acquiescence)**

Plaintiff's claims for damages and other relief are barred in whole or in part by the equitable doctrines of waiver, laches, and/or acquiescence due to activities including but not limited to Plaintiff's (including Plaintiff's predecessors, assignors, etc.) unreasonable delay in asserting the '343 patent against Newegg.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Failure to Provide Notice)**

To the extent that Plaintiff seeks damages for any alleged infringement prior to its giving actual notice of the '343 patent to Newegg, its claims are barred pursuant to 35 U.S.C. § 287(a).

**EIGHTH AFFIRMATIVE DEFENSE  
(Innocent Intent)**

Newegg has engaged in all relevant activities in good faith, thereby precluding Plaintiff, even if he prevails, from recovering reasonable attorney's fees and/or costs under 35 U.S.C. § 285.

**NINTH AFFIRMATIVE DEFENSE  
(Unclean Hands)**

Plaintiff is not entitled to any relief in this action because he has come into this Court with unclean hands.

**TENTH AFFIRMATIVE DEFENSE  
(Failure to Join Necessary and/or Indispensable Parties)**

Plaintiff has failed to join necessary and/or indispensable parties in the present action.

**ELEVENTH AFFIRMATIVE DEFENSE  
(Lack of Standing)**

To the extent Plaintiff lacks standing with respect to any claim, that claim should be dismissed.

**TWELFTH AFFIRMATIVE DEFENSE  
(License, Covenant Not to Sue, and/or Patent Exhaustion)**

To the extent that any of Plaintiff's allegations of infringement are premised on the alleged use, sale, or offer for sale of methods, systems, apparatus, and/or products that were manufactured by or for a licensee of Plaintiff or its predecessors-in-interest and/or provided to Newegg by or through a licensee of Plaintiff or its predecessors-in-interest, or under a covenant not to sue, such allegations are barred pursuant to license and/or exhaustion.

**COUNTERCLAIMS**

1. Newegg Inc. is a corporation organized and existing under the laws of the State of Delaware. Newegg.com Inc. was a corporation that was organized and that existed under the laws of

the State of Delaware, and joins in these counterclaims to the extent that any rights and/or liabilities of Newegg.com Inc. survive dissolution.

2. Upon information and belief, AdjustaCam LLC, is a Texas limited liability company with its principle place of business in Frisco, Texas.

3. These counterclaims arise under federal law, and this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201 and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

4. This Court has personal jurisdiction over Plaintiff by virtue of Plaintiff's filing of the Complaint in this action.

5. Venue in this judicial district is proper under at least 28 U.S.C. § 1391 and by virtue of Plaintiff's filing of the Complaint in this action.

6. Plaintiff has asserted that Newegg infringes the '343 patent. An actual controversy exists between Newegg and Plaintiff over alleged infringement, invalidity, and unenforceability of the '343 patent.

**FIRST COUNTERCLAIM – NONINFRINGEMENT OF THE '343 PATENT**

7. Newegg incorporates and realleges Counterclaim Paragraphs 1 through 6 as though fully set forth herein.

8. Newegg has not infringed and does not infringe any valid, enforceable claim of the '343 patent asserted by Plaintiff, either literally or under the doctrine of equivalents.

9. Newegg has not and does not contribute to and/or induce infringement by others of any valid and enforceable claim of the '343 patent asserted by Plaintiff, either literally or under the doctrine of equivalents.

10. Newegg seeks a declaratory judgment that it has not infringed and does not infringe any valid, enforceable claim of the '343 patent asserted by Plaintiff, either literally or under the doctrine of equivalents.

11. Newegg seeks a declaratory judgment that it has not and does not contribute to and/or induce infringement by others of any valid and enforceable claim of the '343 patent asserted by Plaintiff, either literally or under the doctrine of equivalents.

**SECOND COUNTERCLAIM – INVALIDITY OF THE '343 PATENT**

12. Newegg incorporates and realleges Counterclaim Paragraphs 1 through 11 as though fully set forth herein.

13. The '343 patent, and each claim thereof that is asserted by Plaintiff, is invalid for failing to satisfy one or more of the requirements of the Patent Act, 35 U.S.C. § 1, *et seq.*, including but not limited to the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

14. Newegg therefore seeks a declaratory judgment that each claim of the '343 patent that is asserted by Plaintiff in this action is invalid for failure to satisfy one or more requirements of the Patent Act, 35 U.S.C. § 1, *et seq.*

**RESERVATION OF RIGHTS**

Newegg reserves the right to add any additional defenses and/or counterclaims that discovery may reveal.

**NEWEGG'S PRAYER FOR RELIEF**

WHEREFORE, Newegg respectfully requests that the Court enter judgment in favor of Newegg Inc. and Newegg.com Inc. and against Plaintiff, as follows:

- a. an order and judgment declaring that Newegg Inc. and Newegg.com Inc. do not infringe any claim of the '343 patent that is asserted by Plaintiff in this action, under any theory;
- b. an order and judgment declaring that the claims of the '343 patent, which are asserted by Plaintiff in this action, are invalid and/or unenforceable;
- c. an order that Plaintiff take nothing by the Complaint, that no injunctive relief shall issue in favor of Plaintiff, and that the Complaint be dismissed with prejudice;
- d. an order that no costs, expenses, attorneys' fees, or other relief shall be awarded to Plaintiff;
- e. an order declaring this case exceptional pursuant to 35 U.S.C. § 285 and awarding attorneys' fees to Newegg Inc. and Newegg.com Inc.;
- f. an order that costs and expenses shall be awarded to Newegg Inc.; and
- g. any other relief that the Court deems just and proper under the circumstances.

**JURY DEMAND**

Newegg hereby demands a jury trial on all issues so triable in this case.

DATED THIS 26th day of August, 2011.

ZARIAN MIDGLEY & JOHNSON PLLC

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Attorneys for Defendants  
Newegg Inc., Newegg.com Inc., and Rosewill

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that all counsel of record who are deemed to have consented to electronic service are being served this 26th day of August, 2011, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission, and/or first class mail on this same date.

/s/ Christopher J. Cuneo

Christopher J. Cuneo